

PART 33 — PROTESTS, DISPUTES, AND APPEALS

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ENGINEER FAR SUPPLEMENT (EFARS)

PART 33 — PROTESTS, DISPUTES, AND APPEALS

SUBPART 33.1 — PROTESTS

33.103 Protests to the agency.

(b)(1) Contracting officers in the Huntsville and New England Divisions, the Pacific Ocean Division (only for Honolulu District procurements), TEC, CRREL, CRREL, WES, and HECSA shall forward all agency procurement protests (including, for example, protests against award, protests based upon alleged improprieties in a solicitation, and protests against the reasonableness of the Government Estimate) to the Chief Counsel, HQUSACE (ATTN: CECC-C) for decision. Contracting officers in any district, the Transatlantic Division, and the Pacific Ocean Division (only for Korea and Japan District procurements) shall forward all agency procurement protests to the Division Counsel for decision. The only exceptions to this requirement are protests addressed to the agency that can be resolved by allowance or withdrawal within the command receiving the protest.

(S-100) Unless the agency protest is resolved by allowance or withdrawal, no contract shall be awarded prior to a decision on the protest. An expedited decision by the Chief Counsel may be requested in urgent cases; any such request must be accompanied by an explanation of the emergency and a contracting officer's report as complete as possible under the circumstances.

(S-101) If an apparent low bidder protests the reasonableness of the Government's estimate, the Command shall provide the details of the Government estimate, to the protestor only, upon receipt of complete details of the protestor's estimate.

33.104 Protests to GAO.

(a)(3)(i) Contracting officers in the Lower Mississippi Valley, North Central, New England, Pacific Ocean, and Southwestern Divisions shall forward all GAO protests to the Chief Counsel, HQUSACE (attn: CECC-C) within fourteen calendar days of the telephone notification for determination of the final agency position on the protest. Contracting officers in the Huntsville, Missouri River, North Atlantic, North Pacific, Ohio River, South Atlantic, South Pacific, and Transatlantic Divisions shall forward all GAO protests to the Division

Counsel within fourteen calendar days of telephone notification for determination of the final agency position on the protest; Division Counsels in these divisions may delegate this authority to District Counsels.

(b) All requests for the Office of the Deputy Assistant Secretary of the Army (Procurement) (SARD-PC) for approval to award a contract or issue a notice to proceed, notwithstanding a protest, shall be forwarded to the Chief Counsel, HQUSACE (ATTN: CECC-C), for determination of the final agency position on the request and transmittal to SARD-PC. The request shall include a complete explanation for the need to award or proceed with performance of the contract, including costs and other impacts, and the contracting officer's report with the analysis and documentation set forth in 33.104(a)(3) if not previously submitted.

33.105 Protests to GSBCA.

33.105-100 Litigation of GSBCA protests.

Protests filed with the GSBCA shall be litigated by a trial team designated by the Chief Counsel. The lead trial attorney shall be the Senior Counsel for Information Management (CECC-T).

33.1100 Contracting officer's reports on GAO and agency protests.

(a) In addition to the documents described in FAR 33.104(a)(3), each contracting officer's report on an agency or GAO protest shall include:

(1) Findings of fact prepared with complete documentation and including all the facts, both favorable and unfavorable, to the contracting officer's position.

(2) Review by legal counsel with citation to pertinent decisions of the Comptroller General.

(b) The contracting officer's report shall not be released to any member of the public, including the protestor and other interested parties, without the prior approval of the office having authority to decide an agency protest or to determine the final agency position on a GAO protest.

ENGINEER FAR SUPPLEMENT (EFARS)

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SUBPART 33.2 — DISPUTES AND APPEALS

33.203 Applicability.

33.203-100 Agency board of contract appeals for civil works contracts.

For civil works contracts only, the Corps of Engineering Board of Contract Appeals, Pulaski Building, 20 Massachusetts Ave., N.W., Washington, D.C. 20314, is the agency board having jurisdiction over claims and appeals arising from final decisions of the contracting officer. The Armed Services Board of Contract Appeals shall have jurisdiction over non-civil works contracts.